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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,885	09/05/2003	Rudolf Haindl	TRG-317	7195

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EXAMINER
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KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/655,885

Applicant(s)

HAINDL ET AL.

Examiner

Sarah L Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 13-28 and 37-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 29-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

Applicant's election without traverse of claims 1-12 and 29-36 in the reply filed on January 24<sup>th</sup>, 2005, is acknowledged.

### ***Claim Objections***

Claims 31-34 are objected to because of the following informalities: These claims should all add "of the gelling agent" after "content." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claim 8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 recites the limitations "the carrageen content," "the cellulose content," "the konjac flour content," and "the alginate content." There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 11, 29, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrison et al., WO 00/36930.

In regard to claims 1 and 29, Morrison discloses a structure-reversible milk product, which consists essentially of cream, skimmed milk or water, and also a gelling agent, wherein the gelling agent contains exclusively vegetable raw materials (examples 7 and 8).

In regard to claim 2, Morrison discloses a milk product wherein the milk product remains structure-reversible, even upon setting of a pH value of below 5 (page 9, lines 30-37, examples 7 and 8).

In regard to claims 11 and 36, Morrison discloses the milk product having a gelling agent content of 1-4% by weight (page 7, lines 23-26).

Claims 1, 3-5, 11, 12, 29, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Bertrand et al., U.S. Patent 5,605,712.

In regard to claims 1 and 29, Bertrand discloses a structure-reversible milk product, which consists essentially of cream, skimmed milk or water, and also a gelling agent, wherein the gelling agent contains exclusively vegetable raw materials (column 2, lines 65-67).

In regard to claim 3, Bertrand discloses the milk product being temperature-stable (column 2, lines 6-9).

In regard to claim 4 and 5, Bertrand discloses the gelling agent being a mixture of carrageen, cellulose, konjac flour, and alginate (column 2, lines 42-54).

In regard to claims 11 and 36, Bertrand discloses the milk product having a gelling agent content of 0.5-5.0% by weight (column 6, lines 24-29).

In regard to claim 12, Hogan discloses the milk product containing less than 12% by weight of fat (column 6, lines 36-47).

Claims 1, 3-5, 11, 12, 29, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Hogan et al., U.S. Patent 5,789,004.

In regard to claims 1 and 29, Hogan discloses a structure-reversible milk product, which consists essentially of cream, skimmed milk or water, and also a gelling agent, wherein the gelling agent contains exclusively vegetable raw materials (examples 1-5).

In regard to claim 3, Hogan discloses the milk product being temperature stable (examples 1-5).

In regard to claims 4 and 5, Hogan discloses the gelling agent being a mixture of carrageen, cellulose, konjac flour, and alginate (column 5, lines 4-13).

In regard to claims 11 and 36, Hogan discloses the milk product having a gelling agent content of 0.1-1.0% by weight (column 6, lines 12-22).

In regard to claim 12, Hogan discloses the milk product containing less than 10% by weight of fat (column 6, lines 54-59).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 6, 8, 10, 30-33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertrand.

In regard to claim 6, Bertrand does not disclose the gelling agent being produced exclusively from carrageen, cellulose, konjac flour, and alginate. However, Bertrand does disclose the use microcrystalline cellulose, alginate salt, and at least one water soluble hydrocolloid selected from a group including carrageen and konjac (column 2, lines 42-54). It would therefore have been obvious to use any combination of water soluble hydrocolloids taught by Bertrand, including that claimed by applicant, because they are known to be effective in structure-reversible milk products.

In regard to claims 8, 10, 30-33, and 35, Bertrand does not disclose the exact percentages of cream or the gelling composition components in the milk product that applicant claims. However, all of these ingredients were well known to one of ordinary skill in the art and absent a showing of criticality, it is not seen how applicant's claimed ranges would create an unexpected result.

Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertrand in view of Janovsky et al., U.S. Patent 5,429,830. Bertrand does not disclose the specific carrageen used. However, Janovsky also teaches a gelling composition made entirely of vegetable materials including carrageen of the iota or kappa type (column 4, line 1). It therefore would have been obvious to use a mixture of iota-carrageen and kappa-carrageen in the invention of Bertrand because these materials facilitate gelling, have elasticity, and are able to provide excellent texture and chewability.

Claims 9 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertrand in view of Villigran et al., U.S. Patent 6,180,159. Bertrand does not disclose the

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use of sodium caseinate in the gelling composition. However, it was well known to one of ordinary skill in the art to incorporate sodium caseinate in milk products, such as creamers, as evidenced by Villigran (column 4, line 65-67). It therefore, would have been obvious to use sodium caseinate in the gelling composition of Bertrand, in the ranges claimed by applicant, because it was a known proteinaceous foam stabilizing agent (column 5, lines 14-15).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

  
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